

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 8749

IN THE MATTER OF:

Served May 31, 2005

Application of ZEE TRANSPORTATION)
SERVICE INC. for a Certificate of)
Authority -- Irregular Route)
Operations)

Case No. AP-2005-01

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District, restricted to transportation in vehicles with a seating capacity of less than 16 persons only, including the driver.

Under Article XI, Section 7(a), of the Compact, the Commission shall issue a certificate of authority to any qualified applicant, authorizing all or any part of the transportation covered by the application, if the Commission finds that: (i) the applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission; and (ii) the transportation is consistent with the public interest.

An applicant for a certificate of authority must establish financial fitness, operational fitness, and regulatory compliance fitness.¹ A determination of compliance fitness is prospective in nature.² The purpose of the inquiry is to protect the public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.³ Past violations do not necessarily preclude a grant of authority but permit the inference that violations will continue.⁴ The past conduct of an applicant's owners and officers is relevant to a determination of applicant's compliance fitness.⁵

This is the second application filed by this applicant. The first was denied for failure to establish regulatory compliance fitness based on previous violations committed by applicant's CEO and sole shareholder, Zainabu Kamara.⁶

¹ In re Zee Transp. Serv. Inc., No. AP-04-115, Order No. 8275 (Sept. 20, 2004).

² Id.

³ Id.

⁴ Id.

⁵ Id.

⁶ See id. (denying application without prejudice).

I. BACKGROUND

Zainabu Kamara previously conducted passenger carrier operations in the Metropolitan District under the trade name Nallah Transportation Express. Ms. Kamara held WMATC Certificate of Authority No. 506 from December 9, 1999, until March 12, 2004, when it was revoked for Ms. Kamara's willful failure to comply with Article XI, Section 11(b), and Article XII, Section 3(a), of the Compact, Regulation No. 61 and Order No. 7274.

Ms. Kamara subsequently formed Zee Transportation Service Inc. and filed an application for a new certificate of authority on June 23, 2004.⁸ That application was denied without prejudice on September 20, 2004, for failure to establish compliance fitness, because although Ms. Kamara had paid a \$2,500 forfeiture in connection with the offenses that led to revocation of Certificate No. 506, she continued operating after receiving notice of the revocation, still had not complied with the requirement in the revocation order (Order No. 7854) that she file an affidavit verifying removal of markings from her vehicles, and had yet to file a compliance report pursuant to Commission Rule No. 28 confirming that she had finally ceased transporting passengers for hire between points in the Metropolitan District.⁹

Shortly after Zee's first application was denied and prior to filing this application, Ms. Kamara filed an affidavit confirming cessation of WMATC operations. The affidavit also confirms removal of markings from one of her two revenue vehicles, which the record shows has since been donated to charity. An inspection of Ms. Kamara's remaining vehicle by Commission staff reveals that all markings have been removed from that vehicle, as well.

II. CURRENT APPLICATION

The current application was filed December 27, 2004. In it, applicant proposes commencing operations with two vans. Applicant's proposed tariff contains rates for Medicaid transportation and non-Medicaid transportation.

Applicant verifies that: (1) applicant owns or leases, or has the means to acquire through ownership or lease, one or more motor vehicles meeting the Commission's safety requirements and suitable for the transportation proposed in this application; (2) applicant owns, or has the means to acquire, a motor vehicle liability insurance policy that provides the minimum amount of coverage required by Commission regulations; and (3) applicant has access to, is familiar with and will comply with the Compact, the Commission's rules, regulations and orders, and Federal Motor Carrier Safety Regulations as they pertain to transportation of passengers for hire.

Applicant published notice of this application in a newspaper of general circulation as directed by the initial order in this

⁷ In re Zainabu Kamara, t/a Nallah Transp. Express, & Nallah Transp. Express, Inc., No. MP-03-62, Order No. 7854 (Mar. 12, 2004), aff'd on reconsideration, Order No. 8062 (June 7, 2004).

⁸ See In re Zee Transp. Serv. Inc., No. AP-04-115, Order No. 8195 (July 29, 2004) (noting application).

⁹ Order No. 8275.

proceeding, and no comments, requests for intervention or protests have been received.

Normally, such evidence would establish applicant's fitness,¹⁰ but, as noted, in this case applicant's CEO/sole shareholder has a history of regulatory violations. When a person controlling an applicant has a record of violations, or a history of controlling companies with such a record, the Commission considers the following factors in assessing the likelihood of applicant's future compliance: (1) the nature and extent of the violations, (2) any mitigating circumstances, (3) whether the violations were flagrant and persistent, (4) whether the controlling party has made sincere efforts to correct past mistakes, and (5) whether the controlling party has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.¹¹

As noted in the first application, Ms. Kamara's violations were serious and persistent enough to warrant revocation of Certificate No. 506 and assessment of a \$38,250 civil forfeiture.¹² But the forfeiture was reduced to \$2,500 in consideration of the apparent lack of any profit from wrongdoing, Ms. Kamara's production of inculpatory evidence and Ms. Kamara's attempt to cure the violations by filing a transfer application shortly after the investigation was initiated.¹³

Ms. Kamara timely paid the net forfeiture and is now in compliance with Commission Rule No. 28 and the affidavit requirement of the revocation order, Order No. 7854. In addition, applicant has hired an attorney, former WMATC Assistant General Counsel Joel C. Weingarten, to furnish ongoing regulatory compliance advice. The Commission has found other applicants fit under similar circumstances.¹⁴

III. CONCLUSION

Based on the evidence in this record, and in consideration of the conditions prescribed herein, the Commission finds that the proposed transportation is consistent with the public interest and that applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

¹⁰ In re Henka Int'l, Inc., t/a Worldwide Tours & Travel, No. AP-03-184, Order No. 8035 (May 27, 2004); In re VGA, Incorporated, No. AP-03-73, Order No. 7496 (Oct. 29, 2003).

¹¹ Order No. 8275; Order No. 8035.

¹² Order No. 8275.

¹³ Id.

¹⁴ See Order No. 8035 (filing markings affidavit and accounting for vehicles); Order No. 7496 (retaining compliance attorney); In re Shirlington Limo. & Transp., Inc., No. AP-02-20, Order No. 6709 (June 21, 2002) (payment of forfeiture); In re Haymarket Transp., Inc., No. AP-98-35, Order No. 5427 (Oct. 1, 1998) (payment of forfeiture and filing Rule 28 report); In re Japan Travelers Serv., Inc., No. AP-92-34, Order No. 4055 (Feb. 17, 1993) (hiring attorney and paying forfeiture); In re Ruchman & Assocs., Inc., t/a RAI, Inc., No. AP-91-32, Order No. 3911 (Mar. 25, 1992) (same).

Given the continuity of ownership and similar nature of operations, we shall reissue Certificate No. 506 to applicant upon applicant's compliance with the conditions stated below.¹⁵

Applicant shall serve a one year period of probation as a means of ensuring prospective compliance.¹⁶

THEREFORE, IT IS ORDERED:

1. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 506 shall be reissued to Zee Transportation Service Inc., 6209 Fernwood Terrace, #201, Riverdale, MD 20737.

2. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until a certificate of authority has been issued in accordance with the preceding paragraph.

3. That applicant is hereby directed to file the following documents within the 180-day maximum permitted in Commission Regulation No. 66: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) a vehicle list stating the year, make, model, serial number, fleet number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) a copy of the for-hire vehicle registration card, and a lease as required by Commission Regulation No. 62 if applicant is not the registered owner, for each vehicle to be used in revenue operations; (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia; and (f) a notarized affidavit of identification of vehicles pursuant to Commission Regulation No. 61.

4. That applicant shall be placed on probation for a period of one year commencing with the issuance of a certificate of authority in accordance with the terms of this order and that a willful violation of the Compact, or of the Commission's rules, regulations or orders thereunder, by applicant or its members during the period of probation shall constitute grounds for immediate suspension and/or revocation of applicant's operating authority without further proceedings, regardless of the nature and severity of the violation.

¹⁵ See Order No. 8035 (reissuing certificate given continuity and similarity).

¹⁶ See Order No. 8035 (applicant placed on 1 year probation where controlling shareholders had history of Compact violations); Order No. 7496 (applicant with history of Compact violations placed on 1 year probation); Order No. 6709 (same); In re Adventures By Dawn L.L.C., No. AP-00-89, Order No. 6087 (Jan. 16, 2001) (applicant placed on 1 year probation where controlling shareholders had history of Compact violations).

5. That the grant of authority herein shall be void and the application shall stand denied upon applicant's failure to timely satisfy the conditions of issuance prescribed herein.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES, MILLER, AND SMITH:

A handwritten signature in dark ink, appearing to read 'W. S. Morrow, Jr.', written in a cursive style.

William S. Morrow, Jr.
Executive Director